

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARCHIE ARNOLD PAUL,

Defendant.

)
)
)
)
) Docket Number
) 22-cr-00231-PJM-1
)
)
)
)
)

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT COURT JUDGE
Tuesday, November 7th, 2023, AT 11:17 A.M.

APPEARANCES:

On Behalf of the Plaintiff:

G. MICHAEL MORGAN, JR., ESQUIRE
BIJON MOSTOUFI, ESQUIRE
United State's Attorney's Office
6406 Ivy Lane, Suite 80
Greenbelt, MD 20770
(301)344-8135

On Behalf of the Defendant:

SEAN McKEE, ESQUIRE
Office of the Federal Public Defender
District of Maryland
6411 Ivy Lane, Suite 710
Greenbelt, MD 20770
(301)344-0600

COMPUTER-AIDED TRANSCRIPTION OF STENOTYPED NOTES

PAULA J. LEEPER
Federal Official Court Reporter
United States District Court, Greenbelt, Maryland

I N D E X

TESTIMONY OF CHRISTINE HAYFRON-BENJAMIN

Examination by The Court	7
Cross-Examination by Mr. Morgan	12

P R O C E E D I N G S

(Court called to order.)

THE COURT: Ladies and gentlemen, be seated, please.

MR. MORGAN: Good morning, Your Honor.

THE COURT: Call the case.

DEPUTY CLERK: The matter now pending before the Court is Criminal Action Number PJM-22-0231-1, the United States of America versus Archie Arnold Paul. The matter now comes before the Court for sentencing.

THE COURT: All right. Counsel, identify yourselves for the government and then defendant.

MR. MORGAN: Good morning, Your Honor. Michael Morgan and Bijon Mostoufi on behalf of the United States. We're joined at counsel table by Special Agent Britany Nash from the United States Secret Service. Good morning.

THE COURT: Defendant?

MR. MCKEE: And good morning, Your Honor. Sean McKee representing Mr. Paul, who is present to my right.

THE COURT: Mr. Morgan, we have an issue on the plea agreement?

MR. MORGAN: Yes, Your Honor. It's come to our attention that there is a report filed -- or provided by Ms. Christine Hayfron-Benjamin that's dated November 2nd, 2023, that's -- the subject of which is the release status report,

1 slash, notice of apparent violation.

2 In that, it mentions, in the apparent violation section,
3 on the second page: "When discussing Mr. Paul's treatment and
4 the stopping of the treatment, the writer indicated that
5 Mr. Paul added that this case is not a drug case and he does
6 not have a drug problem. He stated that he only claimed drug
7 use in hopes that it would result in a more lenient sentence.
8 However, recent court decisions that were not in his favor
9 taught him that the Court didn't care; and so, therefore, he
10 did not see the point of continuing the charade."

11 And so that is certainly of concern to the government. If
12 he is not being truthful with regards to his drug use, or lack
13 thereof, his need for treatment, or lack thereof, in order to
14 convey to the Court what he wants to convey to the Court in
15 order to get a more lenient sentence. So that is of concern,
16 great concern to the government.

17 **THE COURT:** What are you proposing to do?

18 **MR. MORGAN:** Your Honor, I believe that depending
19 on -- I believe that it could be a breach of the plea agreement
20 itself, and so we would like the Court to make a determination
21 of whether or not by probable -- by a preponderance of the
22 evidence if it is, in fact, a breach of the plea agreement.

23 **THE COURT:** You don't want to comment on what the
24 remedy would be if I so find?

25 **MR. MORGAN:** Your Honor, if the remedy would be a

1 breach that the government and the Court would no longer be
2 bound by the C plea, but the defendant himself still would be
3 bound by the C plea.

4 **THE COURT:** All right. Mr. McKee?

5 **MR. MCKEE:** Thank you, Your Honor.

6 Your Honor, I think this is an unfortunate
7 misunderstanding. Mr. Paul clearly has had significant drug
8 use issues in the past. He was in drug treatment as early as
9 2012. He made specific statements as to the length and
10 frequency of his drug use during the presentence
11 recommendation.

12 The issue in this conversation with Ms. Hayfron-Benjamin
13 was that at the time of this conversation, Mr. Paul had been in
14 treatment throughout the period of his pretrial, successfully,
15 for a year, had been testing negative the entire time. And at
16 this time, he did not believe that he had a drug problem.
17 That's not at all inconsistent with what he has said in the
18 past.

19 And at no point -- and I verified this with
20 Ms. Hayfron-Benjamin, at no point during this conversation with
21 Ms. Hayfron-Benjamin did Mr. Paul say "I didn't use drugs in
22 the past." That is not what he said. He did not make any
23 misstatements or misrepresentations either to the presentence
24 report or to Ms. Hayfron-Benjamin.

25 And, Your Honor, the characterization of the charade was

1 not Mr. Paul's word. That was the characterization of
2 Ms. Hayfron-Benjamin.

3 **THE COURT:** Perhaps you'll call her and hear her view
4 of the facts.

5 I don't know whether your client is going to want to
6 testify, but I would have him testify under oath. And there is
7 an issue of potential perjury, so you need to advise him.

8 We're not going to decide this on counsel's
9 representation. There is a report, a credible report from our
10 probation officer that he lied to -- in general, and that
11 itself is a concern. Whether or not he had a drug problem, he
12 lied about it.

13 Let's hear what she has to say. I'll let you inquire.
14 But for now, you may proceed.

15 **MR. MCKEE:** May I, Your Honor?

16 The issue, I think, at this point, as a threshold matter,
17 is that we've received notice of this effectively this morning.
18 We are not -- we have not had an opportunity to ask for
19 Ms. Hayfron-Benjamin's notes. We don't have any materials
20 related to this alleged violation.

21 The remedy that the government is asking for is extremely
22 serious compared to what the allegation is. They are asking to
23 completely be excused from their agreement. And so we think we
24 have a right to an adequate hearing with adequate time to
25 prepare.

1 **THE COURT:** All right. Well, that may well be. But
2 we're going to take her testimony now and hear what she says.

3 You've made a representation: Misunderstanding; he never
4 said it; he had a problem. That's not what the report is from
5 the U.S. attorney.

6 Why don't you have a seat now. Let's hear from
7 Ms. Hayfron-Benjamin.

8 You want to stand? I don't know that you need to be
9 sworn, but you're an officer of the court.

10 **CHRISTINE HAYFRON-BENJAMIN,**
11 an officer of the court, was examined and testified as follows:

12 **EXAMINATION**

13 BY THE COURT:

14 **Q.** So tell us what your situation is here. What have you
15 determined with regard to what Mr. Paul has said or done?

16 **A.** Thank you, Your Honor.

17 So the program, he was attending treatment at KP
18 Counseling Services. The program advised me on October 24th,
19 and I saw this message on November 2nd, that he stopped
20 attending treatment --

21 **Q.** At first he stopped attending?

22 **A.** Yes, he stopped attending.

23 **Q.** All right. And when was that?

24 **A.** So the program, in their report, say that he wasn't
25 attending in that month, the month of October.

1 When I went back and took a look at it, he -- and they
2 also clarified that he stopped attending in August, at the end
3 of August.

4 Q. So August, September, October, November -- November?

5 A. So September and October, he wasn't attending. He last
6 attended on August 23rd. Let me just doublecheck.

7 Q. With what frequency was he to attend?

8 A. So he was attending -- one second. Let me review the
9 notes here.

10 So he was attending one hour a month. So in August, he
11 attended one hour.

12 Q. That was the directed time he was to attend, one hour per
13 month?

14 A. Yes. Actually, no, he was attending twice per month. In
15 August, he attended just once. So he was attending twice.

16 Q. Two times per month?

17 A. Yes.

18 Q. For an hour?

19 A. Yes.

20 Q. All right. And where was he attending?

21 A. KP Counseling.

22 Q. Where?

23 A. KP Counseling Services.

24 Q. Where is that?

25 A. That is in Green -- I mean Glen Burnie.

1 Q. All right. Where does he reside?

2 A. He resides in Laurel.

3 Q. In Laurel.

4 Did he ever contact you and say, "I'm not attending
5 anymore?"

6 A. No, he did not.

7 Q. All right. So you then called him on that?

8 A. So I called him. He --

9 Q. When did you talk to him?

10 A. I spoke to him on November 2nd.

11 Q. On when?

12 A. November 2nd.

13 Q. November -- first time?

14 A. About this issue, yes.

15 Q. All right. And what did you say to him?

16 A. So I called him and told him that KP reached out to me,
17 and they informed me that he had stopped attending. And I
18 asked him why. And that's when he gave multiple reasons --

19 Q. I want you to be explicit as to what he said.

20 A. Okay. So the first thing he stated was there were
21 transportation issues. He stated that he was -- he stated that
22 he wanted other family members to have access to the vehicles.
23 That was one reason he gave.

24 Then he stated that he felt that it was a waste -- it was
25 wasteful for him to drive 30 minutes to a treatment program

1 that was only one hour, so he thought that that was wasteful.

2 And then he stated that this isn't a drug case, and he --
3 so he said this isn't a drug case.

4 And then he stated that he did not have a drug problem.

5 So then I stated -- then, I referred to the assessment
6 that he had. And the assessment that he had last year, he
7 informed the program that he -- he informed the program during
8 the assessment that he wasn't currently using, but he had used
9 in -- in the past. And he had mentioned past drug use, but he
10 noted in that assessment that he wasn't currently using.

11 So I asked him about, you know, the drug -- the drug use,
12 and he stated that he -- he remarked that he mentioned drug use
13 because other people had told him that if you mention that you
14 have a drug problem, you will get a more lenient sentence. He
15 had stated that "I was just saying" -- "I was just saying it to
16 see if it would help in reducing the time."

17 And then he stated --

18 **Q.** Let me be clear. He told you this?

19 **A.** Yes, he told me.

20 **Q.** That somebody told him he would get a lesser sentence if
21 he said he had a drug problem?

22 **A.** Right, because you -- yeah. So that's what he stated,
23 that he was told that you get less time if -- so he said "I was
24 just saying it to see if it would help in reducing the time."
25 So -- so he said that, and then so treatment was recommended.

1 And then so, although his counsel stated that, "Well, he
2 never explicitly stated that he never used drugs," that was
3 implied, because he stated, even at the time of the assessment,
4 that he wasn't currently using; he didn't currently have a drug
5 problem. That was never in doubt.

6 So what the question was, well, then, why did you mention
7 drug use?

8 And that's when he remarked that he stated that he had
9 used drugs in the past because of what others had told him
10 about it helps in getting a more lenient sentence.

11 And then he stated that when he -- the last time he had a
12 hearing, I think he filed a motion to get -- to be granted
13 permission to go out to work, and that didn't go in his favor.
14 And he stated that that taught him that the Court doesn't care,
15 so he just didn't see the point. It wasn't going to help
16 him -- you know, claiming a drug problem, past drug use wasn't
17 going to help him in getting a lenient sentence, so what was
18 the point? So he just stopped attending.

19 So that was the conversation.

20 **Q.** He told you he determined that it was not going to help
21 him to say that he had a drug problem?

22 **A.** Right.

23 **Q.** I thought you said earlier he was told that it would help
24 him.

25 **A.** It would help him. But then he stated that since things

1 weren't -- after that hearing didn't go his way, he -- he
2 concluded that the Court doesn't care, that was his -- that was
3 the words he said, "The Court doesn't care."

4 **Q.** The Court doesn't care about his drug problem?

5 **A.** Yeah, the Court doesn't care. And then he just felt that
6 there was no point in continuing to attend the treatment.

7 And then he repeated again, that -- "And, plus, this isn't
8 a drug case anyway." And he again stated, which he's always
9 stated, that he doesn't currently have a drug problem.

10 And so -- and that was consistent with the testing. He's
11 maintained negative drug test results, so the decision was made
12 that I would just discharge him from --

13 **Q.** That he was not currently having a drug problem?

14 **A.** Uh-huh.

15 **Q.** Testing will show -- was he going to testing?

16 **A.** Yeah.

17 **Q.** And it was showing negative?

18 **A.** Negative, consistently.

19 **THE COURT:** All right. Mr. Morgan, you want to
20 inquire?

21 **CROSS-EXAMINATION**

22 **BY MR. MORGAN:**

23 **Q.** The -- the intake at the treatment facility, can you
24 please say -- tell me again what it was that he said he told
25 that treatment provider? Or do you have any record of that?

1 A. Right, I -- yeah. So he stated -- this is an exact quote
2 from the assessment, "Mr. Paul reported" --

3 MR. MCKEE: Your Honor, I'm sorry, we would object.
4 If this is a statement from the provider, these are protected
5 by privilege, and we're not waiving that privilege.

6 THE COURT: No privilege when it comes to law
7 enforcement. Your office needs to learn that. I've had that
8 argument made before. I suggest you look at the statute when
9 it comes to privacy. Law enforcement is not covered by it;
10 otherwise, you could have defendants say we're not going to
11 release information; and you can, though.

12 That's my ruling. Check it out.

13 Go ahead.

14 MS. HAYFRON-BENJAMIN: Okay. So Mr. Paul reported
15 his history of substance abuse began with marijuana at onset
16 age 17, smoking, and reported he stopped using on August 11th,
17 2022; he reported first using alcohol at age 17, but only uses
18 this on rare occasions; he reported use of codeine, onset age
19 25, that was oral, but denied having an issue currently; he
20 reported using codeine at 25 after being prescribed it for pain
21 from being shot, and a bad cough; he reported using codeine
22 until age 29, and reports last use was November 22nd, 2021.

23 He reported attending drug treatment for marijuana
24 voluntarily because of a distribution charge. Client reports
25 he completed treatment in Rockville, but we could not verify

1 this.

2 **BY MR. MORGAN:**

3 **Q.** All right. And as to his current use, was there a
4 statement as to his current use?

5 **A.** Yeah, he stated he denied having an issue currently. So
6 all of the drugs, there was -- he denied having an issue
7 currently. It was only reports of past use. It was the
8 marijuana and then the codeine.

9 **MR. MORGAN:** Okay. The Court's brief indulgence.

10 **BY MR. MORGAN:**

11 **Q.** You wrote in here that he, therefore, did not see the
12 point of continuing the charade. And I think that you
13 mentioned that that wasn't a direct word that he used, but that
14 was what you gleaned from the conversation, was the point of it
15 all.

16 What did you mean by that?

17 **THE COURT:** When did you -- in what context did the
18 word "charade" come up? I guess that's the first thing.

19 **MS. HAYFRON-BENJAMIN:** Right. So in order to do
20 something positive to put on to get a favorable outcome, so the
21 intended --

22 **THE COURT:** Did you use the word to the defendant?
23 Did you say, "This is a charade"?

24 **MS. HAYFRON-BENJAMIN:** No, I'm the one that -- that
25 was my interpretation of what he described.

1 **THE COURT:** Did you say that to him, or that's what
2 you told --

3 **MS. HAYFRON-BENJAMIN:** No, that's what I put in the
4 report.

5 **THE COURT:** That's what you put in your report?

6 **MS. HAYFRON-BENJAMIN:** Yeah.

7 **THE COURT:** Okay.

8 **BY MR. MORGAN:**

9 **Q.** Okay. And so the charade, you're saying, would be the --
10 making it appear as if he had a drug problem even though he
11 didn't?

12 **A.** Yes, and the going to the treatment and addressing the --
13 the nonexistent drug problem in an effort to get a favorable
14 outcome in court.

15 **Q.** Okay. All right.

16 **MR. MORGAN:** Nothing else. Thank you.

17 **THE COURT:** All right. Mr. McKee, let me just stop
18 you for a second. This doesn't have to be the final matter
19 because you've said you had just gotten notice of this, and I
20 think the letter I have is dated November 6th, which is
21 yesterday, so it came in yesterday. And, presumably, this is
22 your first notice, you say, of this, so I don't want to bind
23 you to her testimony.

24 You need to hear what she says, though, because you need
25 to hear what the issue is.

1 You can defer your cross-examination. We'll continue the
2 sentencing to allow for this to be pursued, and for you to talk
3 to your client and figure out what you want to do.

4 Now, here's the issue. I've heard you say this, you want
5 to subpoena all her notes and so on and so forth. I don't know
6 whether that's permitted, but the government may have a
7 position about that.

8 I don't ordinarily get in a situation where a criminal
9 defendant says "I want to subpoena all the probation's notes to
10 see whether they are telling the truth." The government may
11 resist that request. In fact, if you intend to -- if you're
12 going to ask her to subpoena her notes, you do it by formal
13 written motion, and you respond, Mr. Morgan, that you think
14 that it should or should not be done.

15 I will give you the opportunity to examine her. She's an
16 officer of the court, so it's not a matter of being concerned
17 about whether she's -- and so on. There's hearsay issues. You
18 certainly can check out the so-called privacy rights of
19 somebody who is under examination by law enforcement, but I've
20 rejected that argument already once before that your office
21 raised.

22 So that's what we'll do.

23 But what I would say is, I'm prepared to continue the
24 sentencing with this in mind. This is a very serious issue, as
25 far as I'm concerned. You may or may not know, I have a

1 certain resistance to (c)(3) pleas in general. But beyond
2 that, someone who lies, in fact, if he did, someone who makes
3 it up to get a lenient sentence, someone who stops attending
4 treatment, these are all very serious issues.

5 Mr. Paul, and this is to you, you don't need to respond.
6 You're in the criminal justice system. Sad to say at this
7 point, you're not your own man; you don't make the decisions,
8 the Court does, in the end, based on presentations by the
9 government and representations by your counsel. You need to
10 keep that very clearly in your mind because it's going to have
11 an impact on the way the Court handles this case.

12 So unless you want to ask anything now, and I wouldn't
13 bind you or limit you by what you inquire, Mr. McKee, I'll pass
14 this and we'll reset it for hearing. You tell me what you want
15 to do.

16 **MR. MCKEE:** Your Honor, I would defer my
17 cross-examination to the next hearing.

18 **THE COURT:** All right. Fair enough.

19 Anything more that you want to do now, Mr. Morgan?

20 **MR. MORGAN:** Your Honor, may I have one brief moment,
21 please?

22 No, Your Honor, thank you.

23 **THE COURT:** All right. The other thing I would say
24 to you, Mr. McKee, is if you're proposing to call the defendant
25 at a subsequent future hearing, I expect him to be sworn. And

1 there are issues of potential perjury that you need to talk to
2 him about, and consider yourself, in connection with this. So
3 that's another -- I would say factor in the mix that you need
4 to think about.

5 **MR. MCKEE:** Certainly, Your Honor.

6 **THE COURT:** All right. I don't know -- could we
7 check with chambers and see what a date is? Call in and see
8 with Jesse whether we've got some time.

9 How much time you want, Mr. -- I may, frankly, be sort of
10 tied up in the next several weeks, I have to tell you this,
11 with other hearings. But let's see what Jesse has. And then
12 maybe after the first of the year, frankly.

13 All right. Let me see. Let me see what we've got --

14 **MR. MCKEE:** Certainly, Your Honor.

15 **THE COURT:** -- in terms of dates.

16 I might say as well, Mr. McKee, he's still under these
17 conditions as far as probation. I suggest he may want to begin
18 to comply. If he doesn't, that's another factor the Court will
19 consider.

20 **MR. MCKEE:** That point is well taken, Your Honor.

21 **THE COURT:** I think there's no problem with a speedy
22 trial. The Court has to inquire into an issue of whether the
23 defendant has breached and so on.

24 What's the problem? Can you not get a date?

25 (Deputy clerk speaking to the judge.)

1 **THE COURT:** Well, in January. I'm saying, the first
2 week in January, see what she's got.

3 **DEPUTY CLERK:** Okay. Okay. She said the first is
4 January 3rd at 11:00.

5 **THE COURT:** All right. Wednesday, January 3,
6 11:00 a.m. Is that doable?

7 **MR. MORGAN:** Yes, Your Honor. Thank you.

8 **MR. MCKEE:** Your Honor, I am on-duty that day -- I'm
9 on-duty that day, Your Honor, so I can schedule it, but with
10 the caveat that there may be conflict.

11 **THE COURT:** Well, all right. 11:00 a.m. That's what
12 we're talking about.

13 Is it later that day as well? What about the 4th as well?
14 What date -- what's that?

15 **LAW CLERK:** We have two hearings.

16 **THE COURT:** Two hearings on the 4th. We'll keep it
17 on the 3rd at 11:00 a.m.

18 **MR. MCKEE:** I'm sorry, Your Honor, I was looking at
19 the wrong calendar. I have a different conflict. I have a
20 court -- I have a hearing at 10:00. Could we do it in the
21 afternoon on the 3rd?

22 **THE COURT:** Afternoon?

23 **DEPUTY CLERK:** Can we do it in the afternoon for the
24 3rd?

25 **THE COURT:** 2:00 p.m.

1 **DEPUTY CLERK:** So on the 3rd, you have a suppression
2 hearing, she says, at 4:00.

3 **THE COURT:** At 4:00? We'll set this for 2:00 --
4 wait, a suppression hearing at 4:00? That's not right.

5 **DEPUTY CLERK:** Your suppression hearing is at 2:00.

6 **THE COURT:** 2:00. That's what I thought.

7 **DEPUTY CLERK:** She was saying perhaps 4:00 for this
8 hearing.

9 **THE COURT:** What -- when does -- when does your trial
10 start?

11 **LAW CLERK:** The 8th.

12 **THE COURT:** The 8th? What's the 5th? What do you
13 have on the 5th? Is that a weekend? I need a calendar here.

14 **DEPUTY CLERK:** Anything for the 5th?

15 Your Honor, you're free on the 5th. That's a Friday.

16 **THE COURT:** Hm. I don't suppose anybody wants to
17 come in after the Christmas holiday week? I got some time
18 then.

19 **MR. MCKEE:** I'll be away that week.

20 **THE COURT:** That's what I was concerned about. Yeah.

21 I have a January calendar. Let me see. You -- I can't
22 remember, trial starts on the 9th? The 8th?

23 What about the 9th or 10th in the morning, just before the
24 jury -- I know I'm in a trial, but we can do it maybe before
25 that. At maybe 10:00 a.m.?

1 **DEPUTY CLERK:** At 10:00 a.m.?

2 **THE COURT:** January 9th or 10th.

3 **MR. MCKEE:** Those work for me, Your Honor.

4 **MR. MORGAN:** Which date? I'm sorry, Your Honor?

5 **DEPUTY CLERK:** Either date is fine.

6 **THE COURT:** January 9th or 10th? All right.

7 January 9th is a -- is a Tuesday.

8 **MR. MORGAN:** The Court's brief indulgence.

9 **THE COURT:** Make it the 10th, because we're going to
10 be in the beginning of the trial. Make it the 10th at
11 10:00 a.m.

12 **MR. MORGAN:** That's fine, Your Honor. Thank you.

13 **MR. MCKEE:** That works for us. Thank you, Your
14 Honor.

15 **THE COURT:** Have discussions, of course, in the
16 meantime.

17 All right. Is there anything else?

18 **MR. MORGAN:** Nothing from the government. Thank you.

19 **MR. MCKEE:** No, Your Honor.

20 **THE COURT:** Again, the defendant continues on his
21 conditions of release. All right, we'll see you back here on
22 January 10th.

23 **MR. MCKEE:** Thank you very much, Your Honor.

24 **LAW CLERK:** All rise.

25 **DEPUTY CLERK:** This Honorable Court stands in recess.

THE COURT: All right. We're in recess, folks.

(Recess at 11:46 a.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Paula J. Leeper, Federal Official Court Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 21st day of November 2023.

/s/ Paula Leeper

Paula J. Leeper
Federal Official Reporter